United Nations A/HRC/35/36

General Assembly

Distr.: General
19 April 2017

Original: English

Human Rights Council
Thirty-fifth session
6-23 June 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the first report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Vitit Muntarbhorn, which has been prepared pursuant to Council resolution32/2.

The theme of the report is "diversity in humanity, humanity in diversity". The phenomenon of violence and discrimination based on sexual orientation and gender identity is both local and global, requiring strong national and international countermeasures to promote respect for sexual and gender diversity under the umbrella of international human rights law. In recognizing that everyone has some form of sexual orientation and gender identity, there is the regrettable reality that some groups and persons are affected by violence and discrimination, precisely because they are viewed as having a sexual orientation and gender identity that is different from a particular societal norm.

The report offers a window through which to gauge the approach and methodology of the Independent Expert. There are key reflections responding to the mandate, particularly regarding the panorama of the situation, including the implementation of international instruments, with identification of good practices and gaps; awareness of the violence and discrimination issue, and linkage with root causes; dialogue, consultation and cooperation with States and other stakeholders; the identification of multiple, intersecting and aggravated forms of violence and discrimination; and support for international cooperation and related services to assist national efforts.

Various underpinnings are singled out for specific attention to help prevent and overcome negative elements fuelling violence and discrimination, and these will be dealt with in greater detail in future reports: namely, decriminalization of consensual same-sex relations; effective anti-discrimination measures; legal recognition of gender identity; destigmatization linked with depathologization; sociocultural inclusion; and promotion of education and empathy.

The report is anchored on the belief that while the diversity among human beings on the basis of sexual orientation and gender identity should be recognized ("diversity in humanity"), it is essential to harness and reinforce, from a young age, mutual respect, tolerance and understanding, compliance with human rights, and a sense of humanity and inclusivity inherent in that diversity ("humanity in diversity"), to accord protection for all and to all.

GE.17-06261(E)
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I. Introduction

1. The mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was established by the Human Rights Council in 2016 in its resolution 32/2.[1] Vitit Muntarbhorn, an emeritus law professor from Thailand, was appointed to the post, as the first mandate holder. He began his mandate in November 2016. The Independent Expert is mandated to report annually to the Human Rights Council and the General Assembly. The present report is the first by the Independent Expert under a three-year mandate and it covers the first few months of his work, up until March 2017. The Independent Expert wishes to warmly thank Governments, international organizations, non-governmental organizations, communities, individuals and other stakeholders for their kind support. He welcomes the information sent by numerous contributors, which will progressively be integrated into his analysis and reports.

2. Everyone has some form of sexual orientation and of gender identity.[2] Sexual orientation has an external dimension — it indicates a person's sexual inclination and feelings towards others. Gender identity has an internal dimension — the term refers to how a person self-identifies in regard to his or her own gender, which may be different from the gender assigned at birth. Even though human rights are inherent to everyone and involve protection for all persons without exception, regrettably persons with an actual or perceived sexual orientation and/or gender identity diverging from a particular societal concept are at times targeted for violence and discrimination, and violations are pervasive in numerous settings. Killings, rapes, mutilations, torture, cruel, inhuman and degrading treatment, arbitrary detentions, abductions, harassment, physical and mental assaults, bullying suffered from a young age, pressures leading to suicide, and discriminatory gestures and measures — aggravated by incitement to hatred — in relation to sexual orientation and gender identity, are widespread on several fronts. These negative incidents call for effective action to counter the violence and discrimination in their various forms. This is a local-global phenomenon that traverses the home, the educational system, community relations, national scenarios and the international setting.

3. The present report is thus anchored on the belief that while the diversity among human beings on the basis of sexual orientation and gender identity should be recognized (i.e. diversity in humanity), it is essential to harness and reinforce, from a young age, mutual respect, tolerance and understanding, compliance with human rights, and a sense of humanity and inclusivity inherent in that diversity (i.e. humanity in diversity), under the umbrella of international human rights law, to accord protection for all and to all.

II. Methodology

4. The work of the Independent Expert follows the mandate set by the Human Rights Council as part of the Council's special procedures. From the outset, the Independent Expert has adopted an approach of open and constructive dialogue and of engagement with

[1] See A/HRC/29/23 for background information.

[2] For some definitions, see *Living Free and Equal: What States Are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People* (United Nations publication, 2016), pp. 18 and 19, available from www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf: "Gender identity reflects a deeply felt and experienced sense of one's own gender … Transgender (sometimes shortened to "trans") is an umbrella term used to describe people with a wide range of identities … Trans women identify as women but were classified as males when they were born. Trans men identify as men but were classified female when they were born … Intersex people are born with physical or biological sex characteristics including sexual anatomy … that do not fit the typical definitions of male or female … Sexual orientation refers to a person's physical, romantic and/or emotional attraction towards other people … Gay men and lesbian women are attracted to individuals of the same sex as themselves. Heterosexual people are attracted to individuals of a different sex from themselves. Bisexual … people may be attracted to individuals of the same or different sex."

a broad range of stakeholders. Shortly after assuming the mandate, the Independent Expert held a public consultation on the mandate to engage in dialogue with Governments, non-governmental organizations, international organizations and other actors, in Geneva, in January 2017. The aim was to consult broadly on the work under the mandate. The consultation was webcast publicly so as to enable global access to it. The various key issues raised during the consultation are reflected in the present report. Since the beginning of his work on the mandate, he has gathered a wide range of information — some written, some oral — to help prepare the present report. This is an introductory report — a window through which to gauge his approach — and it provides an overview of issues to be explored in more detail in subsequent reports. It is the Independent Expert's intention to balance and cross-check between a variety of sources of information — governmental, intergovernmental and non-governmental. He does this with a view to ensuring objectivity of analysis in his capacity as Independent Expert; the present report was written and typed by the Independent Expert himself.

5. Other aspects of the methodology include plans for country visits, action to respond to communications to address negative situations pertaining to sexual orientation and gender identity, and cooperation with a broad range of actors, including affected groups and individuals, Governments, regional and national human rights institutions, other special procedure mandate holders, human rights treaty bodies and United Nations agencies. The first country visit carried out by the mandate holder was to Argentina, in March 2017. His end-of-mission statement is available online.[3] A separate report on his mission to Argentina will be issued subsequently. The Independent Expert warmly thanks the Government and people of Argentina for their excellent cooperation. He was impressed with many key developments in the country, which provide positive lessons for the rest of the world community, while also bearing in mind a range of challenges.

III. Mandate

6. There are various essentials that should be taken into account in undertaking work related to this mandate. Firstly, words are very sensitive under the mandate. From his very first days undertaking his tasks, the Independent Expert has been struck by the quest for balanced terminology concerning sexual orientation and gender identity. The acronym "LGBTI" appears in discussions and is closely linked with this mandate.[4] It stands for lesbian, gay, bisexual and transgender (persons). Many people are confused by the terms "transgender man/trans man" and "transgender woman/trans woman". The former denotes those classified biologically at birth as women, who wish to have their self-identity recognized as men, while the latter means the converse: those classified biologically at birth as men, who wish to have their self-identity recognized as women. The term "intersex" (person) — the "I" in "LGBTI" — even when explained as referring to persons with atypical sex characteristics, is not easily understood.[5] The mandate will cover this group where there is a link with sexual orientation and gender identity, while recognizing that the group has special features not necessarily related to sexual orientation and gender identity.

7. Secondly, regrettably, every society has many pejorative terms used to designate various groups and persons as regards their sexual orientation or gender identity. Semantic negativities add to a lack of (or difficulties in) understanding and to misconceptions — fuelling narrow mindsets — about those who fall under the rubric of sexual orientation and gender identity, and this dilemma contributes to the ensuing violence and discrimination. There is thus an invitation to clarify the terms used and to avoid negative terminology, to help prevent misunderstandings and to stem biases and prejudices which breed various "phobias" and which are found, to a lesser or greater extent, in all societies. Many United

[3] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21343&LangID=E.
[4] Ibid.
[5] Ibid.

Nations programmes, underlining the plight of persons, now employ the denomination "LGBTI", and add an "I" when referring to intersex persons (thus "LGBTI").[6]

8. Thirdly, the preamble to Human Rights Council resolution 32/2, which established the mandate of the Independent Expert, is a key reminder that there are historical, cultural, socioeconomic, political and religious sensitivities, and that there is a need to respond to them in a measured and judicious way, bearing in mind their connectivity with international human rights standards. The preamble reaffirms the Universal Declaration of Human Rights. The relationship between international human rights law — particularly its universality and indivisibility — and national and regional particularities is then evoked in a famous passage from the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights held in Vienna in1993, which is cited in Council resolution 32/2 as follows:

> Recalling that the Vienna Declaration and Programme of Action affirms that all human rights are universal, indivisible and interdependent and interrelated, that the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis, and that while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

9. Fourthly, the preamble also emphasizes the need to maintain joint ownership of the international human rights agenda and to strengthen action against racism, racial discrimination, xenophobia and related intolerance in all their forms — all of which may be interrelated with violence and discrimination in regard to sexual orientation and gender identity.[7] This introduces the intersectionality between sexual orientation and gender identity on the one hand, and other issues, such as race and others forms of discrimination.

10. Fifthly, the Independent Expert is requested under Council resolution 32/2, as follows:

> (a) To assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, while identifying both best practices and gaps;
>
> (b) To raise awareness of violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination;
>
> (c) To engage in dialogue and to consult with States and other relevant stakeholders, including United Nations agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, regional mechanisms, civil society organizations and academic institutions;
>
> (d) To work in cooperation with States in order to foster the implementation of measures that contribute to the protection of all persons against violence and discrimination based on sexual orientation and gender identity;
>
> (e) To address the multiple, intersecting and aggravated forms of violence and discrimination faced by persons on the basis of their sexual orientation and gender identity;
>
> (f) To conduct, facilitate and support the provision of advisory services, technical assistance, capacity-building and international cooperation in support of

[6] See, for example, the Office of the United Nations High Commissioner for Human Rights (OHCHR) paper issued on 25 November 2015 entitled "The role of the United Nations in combating discrimination and violence against individuals based on sexual orientation and gender identity".

[7] See Human Rights Council resolution 32/2.

national efforts to combat violence and discrimination against persons on the basis of their sexual orientation or gender identity."[8]

11. Key elements emanating from the mandate cited above can be summarized into five main areas, as follows: (a) implementation of international instruments, with the identification of good practices and gaps; (b) awareness of the violence and discrimination issue, and linkage with root causes; (c) engagement, consultation and cooperation with States and other stakeholders; (d) addressing multiple, intersecting and aggravated forms of violence and discrimination; and (e) support for international cooperation and related services to assist national efforts. These elements will be responded to in greater detail below, after a brief situational analysis of violence and discrimination based on sexual orientation and gender identity.

12. In keeping with the role of the special procedures, the work of the Independent Expert is related to at least four functions: (a) preparing reports on the mandate; (b) periodically carrying out country visits to learn about local situations and sharing those lessons with the international community; (c) receiving communications/complaints regarding human rights violations, from victims, and acting on them through contact and leverage with the State or entity concerned; and (d) cooperating with other actors. All these functions are now operational. Importantly, communications are being received and acted upon, for example in regard to threats to human rights defenders working on sexual orientation and gender identity issues.

IV. Panorama

13. This section provides snapshots of violence and discrimination based on sexual orientation and gender identity, and related countermeasures, but cannot do justice to the scale and scope of the issue worldwide. Future reports of the Independent Expert will provide further details and updates.

14. According to the statement from 12 United Nations entities on ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people:

> The United Nations and others have documented widespread physical and psychological violence against LGBTI persons in all regions — including murder, assault, kidnapping, rape, sexual violence, as well as torture and ill-treatment in institutional and other settings. LGBTI youth and lesbian, bisexual and transgender women are at particular risk of physical, psychological and sexual violence in family and community settings. LGBTI persons often face violence and discrimination when seeking refuge from persecution and in humanitarian emergencies. They may also face abuse in medical settings, including unethical and harmful so-called "therapies" to change sexual orientation, forced or coercive sterilization, forced genital and anal examinations, and unnecessary surgery and treatment on intersex children without their consent. In many countries, the response to these violations is inadequate, they are underreported and often not properly investigated and prosecuted, leading to widespread impunity, and lack of justice, remedies and support for victims. Human rights defenders combating these violations are frequently persecuted and face discriminatory restrictions on their activities.[9]

15. The following gaps and challenges are outlined in *Living Free and Equal*:

> Criminalization, discriminatory attitudes, harassment by police, stigma, ill-treatment in detention and medical settings, lack of protective legislation, absence of complaints mechanisms, lack of trust in law enforcement officials and of awareness by judicial operators still result in impunity for perpetrators and make it difficult for victims of human rights violations to access effective remedies and support.

[8] Ibid., para. 3.

[9] See www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF.

> Consensual same-sex relationships remain a crime in 73 countries, which exposes individuals to the risk of arrest, blackmail and extortion, and feeds stigma, discrimination and violence. While five States have decriminalized homosexuality since 2011, in several other States new discriminatory law have been adopted or proposed, sanctions have been broadened and discriminatory restrictions placed on freedom of expression and association.[10]

16. There are many more snapshots below, on the root causes of violence and discrimination. Non-governmental and other sources provide a wealth of information and document a litany of abuses covering all parts of the globe.[11] Underlying that panorama is the multifaceted nature of the violence and discrimination, which stretches from the home to the education system to the community setting to the State level and beyond. This is a systemic phenomenon, which will be discussed further below.

V. Reflections

17. The entry point for the mandate holder is action against violence and discrimination. This is based on existing international human rights law and its interrelationship with sexual orientation and gender identity; there is no advocacy of new rights for particular groups.

18. Also important is the context-specific nature of each country and situation. The situation is not necessarily the same for lesbian, gay, bisexual and transgender (and intersex) persons across the board, even though human rights are inherent to all persons without distinction: the situation is not homogeneous but heterogeneous. For instance, in one country, same-sex relationships are criminalized, with the threat of the death penalty. This is primarily targeted at homosexuals. However, in that same country, those who self-identify as transgender are assisted and recognized by the State (to undergo reassignment surgery). The lack of awareness or understanding or knowledge, and the biases and stereotypes, vary between countries and within each country — depending on diverse factors such as geography (urban vs. rural), demography (e.g. different educational and economic levels), and cultural affinity.

19. The reflections that follow are an initial response regarding the key elements under the mandate.

A. Implementation of international instruments, with identification of good practices and gaps

20. An array of international human rights instruments help to entrench calls for non-violence and the principle of non-discrimination in international law, with due respect for sexual orientation and gender identity. The genesis of human rights protection after the Second World War was the Universal Declaration of Human Rights, of 1948. There are now nine core international human rights treaties, complemented by various protocols.[12] All of them interrelate with the issue of sexual orientation and gender identity, to a lesser or greater extent. For instance, the right to be free from discrimination is propounded in article 2 of the Universal Declaration of Human Rights and in all human rights treaties. Article 2 of the International Covenant on Civil and Political Rights stipulates:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in

[10] See *Living Free and Equal*, p. 11.

[11] For example, a wealth of information was shared at the world conference of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, held in Bangkok from 28 November to 2 December 2016; see http://ilga.org. The Independent Expert has begun attending a number of non-governmental conferences and thanks the hosts warmly for their kind hospitality.

[12] See *The Core International Human Rights Treaties* (United Nations publication, Sales No.E.14.XIV.1).

the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

21. Other provisions (e.g. article 7 of the Universal Declaration of Human Rights and article 26 of the International Covenant on Civil and Political Rights) reaffirm the right to equality before the law and equal protection of the law without discrimination. The stricture against discrimination was deliberated upon by the Human Rights Committee in regard to a seminal case, *Toonen v. Australia*, that concerned the presence of a local law that prohibited same-sex relations. The Committee found that the local law in question violated article 17 of the Covenant in regard to the right to privacy, and that the reference to "sex" in article 2 (1) (as well as in art. 26) covered sexual orientation.[15]

22. Under the International Covenant on Economic, Social and Cultural Rights, the monitoring committee has affirmed that the right to non-discrimination guaranteed by the Covenant includes sexual orientation, gender identity and sex characteristics. Under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, the monitoring committees have issued general comments and have made recommendations to States covering respect for sexual orientation and gender identity.

23. All countries have engaged with the Human Rights Council's universal periodic review and most have engaged with one or more of the special procedures. There has been much coverage of the issue of sexual orientation and gender identity under these mechanisms, particularly from the angle of anti-violence and anti-discrimination, such as in the work of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

24. As evidenced by the wide range of international human rights treaties that are in force, international human rights bodies and procedures — ranging from the human rights treaty bodies, with their general comments and recommendations, to the universal periodic review, to the special procedures' coverage of sexual orientation and gender identity-related violations, to resolutions and studies — the international human rights system has been strengthening the promotion and protection of human rights without distinction. The protection of persons based on their sexual orientation and gender identity, and the mandate of the Independent Expert, are based on international law, complemented and supplemented by State practice.

25. Action against violence and discrimination has been espoused more recently in the 17 globally agreed Sustainable Development Goals, to which all countries are committed, with a framework of 2015-2030 for operationalization. Goal 16, which covers inclusive societies and access to justice, aims to bring about substantial reductions of violence and to promote anti-discrimination measures, on the basis of leave no one behind. An all-inclusive approach invites effective coverage of all persons whatever their sexual orientation or gender identity.

26. The initiatives of regional organizations have led to constructive developments. The European human rights system has evolved greatly and proactively on the issue of sexual orientation and gender identity. The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) has flourished, with important case work on sexual orientation and gender identity being carried out. Furthermore, a number of articles of the Convention, on such matters as the right to non-discrimination, the prohibition of torture, the right to privacy and the right to freedom of expression have been the subject of judicial deliberation. There have been a variety of cases before the European Court of Human Rights, covering a wide expanse of Europe and

[15] See communication No. 488/1992, Views adopted on 31 March 1994. There have been many other cases, for example *Young v. Australia* and *X v. Colombia*, concerning discrimination on the grounds of sex or sexual orientation: see communications No. 941/2000, Views adopted on 6 August 2003, and No. 1361/2005, Views adopted on 30 March 2007, respectively.

interlinking geographically with the furthest reaches of Asia, with much innovative thinking.[14] In parallel to this, the European Union, with its Charter of Fundamental Rights, has strengthened measures against violence and discrimination on the basis of sexual orientation and gender identity, including via the collection and collation of data through the European Union Agency for Fundamental Rights to inform policymaking and action.[15]

27. The inter-American system has offered many contributions to action against violence and discrimination. In addition to its important range of human rights-related declarations and conventions and its regional human rights court and commission, it has appointed a regional rapporteur specifically to cover the issue of lesbian, gay, bisexual, transgender and intersex persons. The General Assembly of the Organization of American States recently approved two treaties which refer to sexual orientation and gender identity directly as grounds on which discrimination must be prohibited: namely the Inter-American Convention Against All Forms of Discrimination and Intolerance and the Inter-American Convention on Protecting the Human Rights of Older Persons.[16]

28. Complementing the measures outlined above, resolution 275 of the African Commission on Human and Peoples' Rights, on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity, of 2014, resonates with the following message for the African region and beyond:

> Strongly urges States to end all acts of violence and abuse, whether committed by State or non-State actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.[17]

29. Interregional cooperation bore fruit when the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights and the United Nations held a joint dialogue in 2016, calling for more mainstreaming of regional and international norms to counter violence and discrimination, interlinking with the opportunities offered by the Sustainable Development Goals. The joint dialogue acknowledged positive steps from the African region, as follows:

> African States are almost all characterized by great diversity in their populations, with ethnic, religious and cultural diversity being the common denominator. In line with article 28 of the Charter,[18] which calls on every individual "to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance", the Commission may advocate for the rights of all persons, including LGBT and intersex persons. In this respect, it can build on positive examples of State action in Africa and elsewhere to respect diversity and protect the human rights of all persons, irrespective of sexual orientation and gender identity. Participants noted that at least 19 African States do not criminalize consensual same-sex relations between adults in their legal systems, that Mozambique in 2014 removed criminal sanctions for such

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[14] See www.coe.int/en/web/sogi;and Frédéric Edel, *Case Law of the European Court of Human Rights Relating to Discrimination on Grounds of Sexual Orientation or Gender Identity* (Strasbourg, Council of Europe, 2015).

[15] See, for example, European Union Agency for Fundamental Rights, *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey – Main results* (Vienna, 2014), at http://fra.europa.eu/en/publication/2014/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-main.

[16] *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights and United Nations* (Pretoria University Law Press, 2016), p. 62. See www.ohchr.org/Documents/Issues/Discrimination/Endingviolence_ACHPR_IACHR_UN_SOGI_dialogue_EN.pdf.

[17] Ibid., p. 28.

[18] African Charter on Human and Peoples' Rights.

> conduct, that Rwanda and other States have resisted recent attempts to introduce such laws into their legal system, that seven States prohibit discrimination in employment on the basis of sexual orientation, that courts in Botswana and Kenya, among others, recently declared the refusal to register LGBT associations to be unconstitutional, and that a number of national human rights institutions (including in Kenya, Uganda and South Africa) have expressed themselves against human rights violations based on sexual orientation or gender identity.[19]

30. Other regional human rights instruments offer opportunities for advocacy against violence and discrimination. For instance, it is stated in the Arab Charter on Human Rights, of 2004, in its article 3, that:

> Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.[20]

31. The ASEAN Human Rights Declaration, of 2012, stipulates that:

> Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.[21]

32. A sample of recent constructive practices can be cited. A number of countries on every continent have seen reforms of antiquated and obstructive laws and policies, even though the progress is not always universal. Many South Asian countries and countries in other regions uphold the rights of transgender people, even where they have difficulty in accepting the rights of gays, lesbians and bisexuals. Same-sex couples are now allowed to marry officially in a number of countries, such as Canada, the United States of America, and a range of countries in Europe and Latin America. In 2016, a top court in Belize declared an old law, which had prohibited same-sex relations, to be unconstitutional. Seychelles reformed its law similarly on this front. In 2017, New Zealand agreed to expunge the criminal record of persons criminalized by the colonial law which had forbidden same-sex relations (the law itself having been abrogated a while ago).[22] Germany also moved to annul Nazi-era homosexuality convictions (about 42,000 such convictions had been made under the Third Reich, under an old provision of the Penal Code (art. 175)) and to offer compensation.[23]

33. Yet, there are evidently several gaps, interlinked with the root causes and environment behind the violence and discrimination, which will be elaborated upon in the sections below. Even in countries that are party to the human rights treaties and even where there are responsive laws, policies and programmes, there are sometimes major incidents of violence and discrimination, such as killings of transgender persons, attacks on sexual orientation and gender identity-related human rights defenders, and sexual orientation and gender identity-related hate speech on social networks, which invites sustained vigilance both at the national and the international levels.

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[19] *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity*, p. 21.

[20] Reprinted in *International Human Rights Reports*, vol. 12 (2005), p. 839.

[21] The Declaration has to be read together with the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration, to ensure implementation in conformity with international human rights law.

[22] See press release by the Government of New Zealand on 9 February 2017, at https://www.beehive.govt.nz/release/historical-homosexual-convictions-eligible-be-wiped.

[23] As reported in the *Bangkok Post* on 24 March 2017, p. 5.

B. Awareness of the violence and discrimination issue, and linkage with root causes

34. The cross-cutting scenario of violence and discrimination is described by the World Health Organization (WHO) as follows:

> Many people in the world are stigmatized and discriminated against because of their actual or perceived sexual orientation or gender identity. Among other disparities, lesbian, gay and transgender people are significantly more likely than the general population to be targeted for violence and harassment, to contract HIV, and to be at risk for mental health concerns such as depression and suicide.
>
> In settings where same-sex consensual sexual behaviour is against the law, people may be deterred from seeking health services out of fear of being arrested and prosecuted.[24]

35. How aware is the general population of the issue of sexual orientation and gender identity and the interface with violence and discrimination? The reality is often embedded in lack of awareness, misunderstanding, misconceptions and/or ambivalence. Violence and discrimination on the basis of sexual orientation and gender identity often starts being experienced in childhood, at home and in school, for example through bullying. The lack of awareness/knowledge might be compounded by stereotyping, homophobia and transphobia, virulent from the bottom to the top of the social, cultural and political ladder, tailed by the immediacy of social networks. Even among those who are educated, there is at times a cloistered mindset that wrongly looks upon lesbian, gay, bisexual and transgender people as being deviants and being mentally ill. Hate crimes, such as killings, rapes, incitement to violence, and cruel treatment on account of one's sexual orientation or gender identity, might be paralleled by prejudice, intolerance and bigotry from the personal level to the systemic level.

36. What are some of the root causes? While more empirical research is needed on the issue, behind the violence and discrimination there is an environment of negative elements: multiple factors, with longitudinal and intergenerational implications. From the health angle, the message from the following citation rings true:

> Violence against people from key populations has been shown to be a risk factor for HIV acquisition. Such violence is common. It can take various forms — physical, sexual or psychological. Violence is fuelled by the imbalance in the power dynamics of gender and by prejudice and discrimination against persons perceived to depart from conventional gender and sexuality norms and identities. Also, multiple structural factors influence vulnerability to violence, including discriminatory or harsh laws and policing practices and cultural and social norms that legitimate stigma and discrimination.
>
> Homophobic violence, too, is increasing in some countries, as more policies and laws have banned same-sex activity and made it a criminal offence. This is likely to increase HIV risk.[25]

37. In reality, there are many social, economic, cultural, legal and political factors behind the environment that breeds violence and discrimination. Various underpinnings deserve particular attention to help prevent and overcome the negative elements of that environment. These will be referred to initially below, and in more detail in future reports from the Independent Expert. In particular, the following underpinnings are essential as part of a strategy of preventing and protecting against violence and discrimination on the basis of sexual orientation and gender identity:

- Decriminalization of consensual same-sex relations;

[24] WHO, *Sexual Health, Human Rights and the Law* (Geneva, 2015), p. 23.

[25] WHO, *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations* (Geneva,2014), p. 101.

- Effective anti-discrimination measures;
- Legal recognition of gender identity;
- Destigmatization linked with depathologization;
- Sociocultural inclusion.
- Promotion of education and empathy

C. Dialogue, consultation and cooperation with States and other stakeholders

38. Constructive dialogue is an imperative for the mandate, and the Independent Expert has endeavoured to initiate this from the very first days of his work. He recognizes that it is essential to build bridges — not only to those who already have plenty of awareness, understanding and knowledge but also to those who have less. In the quest for amicable discourse, there is the understanding that there can be no justification for crimes, such as killings, rapes and torture, nor for discrimination. The opportunity for dialogue, consultation and cooperation was exemplified by the public consultation held in Geneva in January 2017. The consultation was open to States, United Nations agencies and other interested stakeholders. This consultation was planned to help the Independent Expert to identify priority work areas in carrying out his mandate and to develop effective strategies to accomplish them. Major issues discussed included the situation of violence and discrimination based on sexual orientation and gender identity and the various underpinnings referred to above and below. At the end of the consultation, the Independent Expert summarized key inputs from the various participants who advised him on his role and work in fulfilling the mandate as follows:

- Analytical: The work of the mandate holder is based on independent and objective analysis of the situation drawn from a variety of information sources.
- Pedagogical: The work has an educational role in raising awareness among the public and educating the public about the situation.
- Intersectoral: The work invites the Independent Expert to cross-link with a variety of actors and stakeholders — governmental, non-governmental and intergovernmental.
- Focal/vocal: The work is a focal point for those affected by transgressions, and it also helps them to vocalize their concerns, not simply as victims but also as survivors and experts on the subject.
- Empirical: The work is an opportunity for encouraging and generating information and data, possibly disaggregated, to support a balanced evidence-based approach to address the issue.

D. Identifying multiple, intersecting and aggravated forms of violence and discrimination

39. Violence and discrimination often appear not as singular events but as part of a prolonged vicious circle. They are multiple and muliplied — inextricably linked emotionally, psychologically, physically and structurally. They intersect in a variety of ways, and most clearly where the victim is not only attacked or discriminated against for having a different sexual orientation and gender identity but also on grounds of race, ethnic origin, age, gender, or membership of a minority or indigenous community. The person might also be a child, a young girl, an intersex person, a refugee, an internally displaced person, a migrant worker, a person with a disability, and more. This intersectionality involves a conglomeration of incidents, actors, perpetrators, and victims — the latter being revictimized an infinite number of times, possibly in different phases of life. The situation becomes aggravated precisely because of the convoluted nature of the phenomenon, where crimes are replicated against the same victims and where impunity prevails subsequently, from the home to the school, to the community, to the nation State and to the international

spectrum. In today's cyber world and social media, incitement to hatred and violence driven by hate speech relating to sexual orientation and gender identity has an exponential reach, spinning the web of violations in real time and into the future.

40. As an example, the multiple, intersecting and aggravated forms of violence and discrimination based on sexual orientation and gender identity are clearly visible in the refugee and migration context, especially where a person has to flee dangers or persecution. As the Office of the United Nations High Commissioner for Refugees (UNHCR) observes:

> Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons of concern can suffer a wide range of discrimination and violence because of their sexual orientation or gender identity. Displaced LGBTI persons may face continued or additional discrimination in the country in which they seek asylum or as internally displaced within their country of origin. Persecution may be legally condoned (some countries continue to criminalize same-sex relationships) and in many cases LGBTI persons are ostracized by communities and rejected by their families.[26]

E. Support for international cooperation and related services to assist national efforts

41. This is a key area, where the work of the Independent Expert can help to support cooperation to prevent and overcome violence and discrimination on the basis of sexual orientation and gender identity. Important work is already being done to counter such violence and discrimination and it can be further strengthened. The joint statement from 12 United Nations entities (see para. 14 above) was a major intersectional and intersectoral breakthrough in terms of inter-agency cooperation, between the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), UNHCR, the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime, the World Food Programme, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization (UNESCO), WHO, the World Bank and the Joint United Nations Programme on HIV/AIDS (UNAIDS). At the public consultation held by the Independent Expert in January 2017, there was similar advocacy from the United Nations Human Settlements Programme (UN-Habitat), and the list of cooperating organizations can be expanded.

42. The Independent Expert looks forward to interlinking more closely with United Nations agencies and other actors to support activities, while commending the programmes already undertaken. For instance, UNESCO is involved in addressing the issue of bullying in the educational setting; this is visible through its Teaching Respect for All initiative. It has helped to create lesson plans for teachers to discuss homophobia and transphobia in primary and secondary schools.

43. The UNESCO report entitled "Out in the open: education sector responses to violence based on sexual orientation and gender identity/expression", published in 2016, provides a wealth of information in this regard. UNESCO has also been working to promote understanding of lesbian, gay, bisexual, transgender and intersex issues in China, with a series of initiatives that includes training of trainers on education on lesbian, gay, bisexual, transgender issues, and with non-governmental help, research for textbooks covering sexual orientation and gender identity has been carried out.

44. The work of UNICEF is guided particularly by the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Its programming on lesbian, gay, bisexual, transgender and intersex issues, and its link with children and youth, is part of its equity strategy to enable all children to develop and realize their potential without discrimination. UNICEF is increasingly looking at child protection through the lens of action against violence and discrimination, inspired by the

[26] UNHCR, "Action against sexual and gender-based violence: an updated strategy", p. 18.

Sustainable Development Goals. Interestingly, in Goal 16, the target is to eliminate violence against children totally in the next 15 years; this also implies a relationship with sexual orientation and gender identity, in order to leave no children behind.

45. OHCHR has been instrumental in preparing various reports and studies on violence and discrimination on the basis of sexual orientation and gender identity. In particular, the publications *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* and *Living Free and Equal* offer very useful information with global coverage.[27] OHCHR supports the human rights treaty bodies, the universal periodic review and the special procedures in their work and helps to mainstream the issue into a cross-cutting United Nations setting. Together with other partners, it helps to organize the annual International Day Against Homophobia, Transphobia and Biphobia event. Its field presences around the world assist in disseminating information, collecting information and addressing cases where there are violations, with a view to strengthening human rights protection on the basis of sexual orientation and gender identity. Its Free and Equal campaign is a broad information campaign, with publications, films and videos raising the profile of sexual orientation and gender identity from the angle of action against violence and discrimination. Particularly popular are the videos *Faces*, which captures the myriad contributions by lesbian, gay, bisexual, transgender and intersex persons to families and communities, *The Welcome*, which provides a human rights message with a Bollywood touch, complete with music, and *The Riddle*, which examines the abuses facing lesbian, gay, bisexual and transgender persons across the globe.

46. UNDP has a large number of programmes worldwide on lesbian, gay, bisexual, transgender and intersex issues, and the outreach is both to the pillars of the State (the executive, legislative and judicial branches) and to pillars of the community, such as national human rights institutions, non-governmental organizations and human rights defenders, including platforms for dialogue with local governments. Pursuant to the Sustainable Development Goals, UNDP is working on a lesbian, gay, bisexual, transgender and intersex inclusion index to help generate more data, which will also contribute to policy formulation and programming. Some of the activities are on strengthening HIV responses for men who have sex with men and transgender people, and access to health care, while others are more directly on the legal and social environment for lesbian, gay, bisexual and transgender persons and civil society in a number of countries.

47. UNFPA concentrates on the issue of sexual and reproductive rights and their relationship with health, including for lesbian, gay, bisexual, transgender and intersex persons, through four areas: policy formulation, capacity development, information and knowledge and delivery of services. It has developed a stigma index tool to help expose stigma, and has enabled access to condom and lubricant programming based on the principles of non-stigmatization and non-coercion. It has reached out to vulnerable groups to reduce HIV-related stigma, and it has called for the reform of punitive laws that drive people underground, in relation to same-sex relations, sex work and drugs-related situations.

48. The work of WHO, particularly in the area of sexual health, has already been referred to above, as has the work of UNHCR on refugees, asylum seekers and stateless persons, particularly in relation to the intersectionality issue. UNHCR has been facing new challenges in regard to recent outflows from the war-related situations in Middle East to Europe and other regions, and it has done key work to raise the profile of sexual orientation and gender identity issues. Meanwhile, UN-Women has been highlighting the rights of lesbians and bisexual, transgender and intersex women and girls; thus has included the mapping of country situations and support for follow-up to the recommendations of human rights treaty bodies and the universal periodic review. For instance, there is an awareness-raising programme on action to end violence against women in Malawi, which includes references to lesbian, bisexual and transgender women. Complementing this, the International Labour Organization is infusing the lesbian, gay, bisexual and transgender

[27] OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (United Nations publication, 2012), and *Living Free and Equal*.

issue strongly into its decent work programme, while the World Bank has helped to examine the cost of homophobia as well as to generate data on lesbian, gay, bisexual and transgender exclusion. The World Bank has now a focal point on sexual orientation and gender identity and this provides an important opportunity to address violence and discrimination on the basis of sexual orientation and gender identity, especially with low-income countries. A range of other United Nations agencies and programmes, enhanced by United Nations country teams, are progressively integrating the issue of sexual orientation and gender identity into country programming.

49. The role of civil society and non-governmental organizations and of concerned communities and individuals is critical for action against violence and discrimination. Their dedicated efforts and inputs were instrumental in helping to set up this mandate, and there is a wealth of information emanating from their work which inspires the work of the Independent Expert. They are part and parcel of much-needed cooperation at both the national and international levels and act as human rights defenders in the most sensitive situations. Assistance and protection for their work are at the heart of this mandate, which is impelled by the quest for an all-inclusive approach that is respectful of public participation in countering violence and discrimination on the basis of sexual orientation and gender identity, worldwide. Indeed, this is living democracy in regard to sexual and gender diversity.

50. Parallel to this, the role of community leaders, including in the political, cultural and religious fields, needs to be tapped more strongly. Also, the business sector has the potential to integrate sexual orientation and gender identity into the workplace and in the commercial/financial/investment/developmental field. These are also avenues for promoting the generation of more disaggregated data, linked with various indicators, to provide incentives for exemplary performance, consonant with human rights. On a related front, the Sustainable Development Goals framework provides more opportunities for various kinds of cooperation and support — particularly under Goal 17, which opens up space for more multilateral, regional and bilateral cooperation. There is the welcome vista of more South-South cooperation, as well as triangular cooperation — such as activities between States, civil society and the business sector; neither should the power of various forms of media and their reach be forgotten.

VI. Underpinnings

51. Various elements interrelate closely with the root causes and environment behind the violence and discrimination. On that matter, the underpinnings outlined in the following paragraphs will be dealt with progressively by the Independent Expert as part of a workplan and mapping exercise, in the coming years. They are discussed succinctly in the present report, as a precursor to other more detailed reports that will follow in the future.

A. Decriminalization of consensual same-sex relations

52. Laws and policies that criminalize consensual same-sex relations are part of the background environment that leads to violence and discrimination. Some 70 countries criminalize same-sex relations, with a particular impact on men who have sex with men.[28] Some 40 countries criminalize same-sex relations in regard to women who have sex with women.[29] The death penalty awaits in some countries. There are other laws and policies of a more indirect nature, which might also be negatively applied against certain groups and persons in relation to sexual orientation and gender identity. They include laws based on public decency, public health and security, at times in the guise of local criminal laws and regulations. There are equally challenging implications from various religious laws when applied strictly. Some countries also criminalize cross-dressing, such as where men dress

[28] *Living Free and Equal*, p. 54.
[29] Ibid.

up as women and vice versa, even the criminalization violates the person's self-identified gender.

53. As noted in a recent UNHCR study:

> The majority of laws criminalizing same-sex sexual activity were noted by respondents in countries in Africa, Asia-Pacific, and the Middle East and North Africa region, with a few offices also highlighting similar laws targeting transgender identity. While many respondents in the Americas and Europe reported significant progress to ensure adequate legal protection of the human rights of LGBTI persons, there nonetheless remain some countries in these regions with laws that criminalize core aspects of LGBTI expression …
>
> While laws targeting LGBTI persons may be written to criminalize specific sexual acts rather than the broader identities of persons with a diverse sexual orientation or gender identity, some offices noted that such laws may nonetheless be used to prosecute individuals who identify as LGBTI. A respondent in a country in the Middle East and North Africa region reported, for instance, that "some LGBTI people have been convicted by the authorities solely for their presumed sexual orientation", despite the fact that only same-sex activity, rather than LGBTI identity, is criminalized in the country of operation.[30]

54. There is thus a need to move towards decriminalization in respect of these laws, which regrettably help to fuel the violence and discrimination.

B. Effective anti-discrimination measures

55. Many countries are still hampered by a lack of anti-discrimination measures or insufficient anti-discrimination measures; this, too, is linked to environments that lead to violence and discrimination. This is a longitudinal challenge, which starts in the home and extends to the education system, the workplace, and life beyond. Some countries have moved towards integrating sexual orientation and gender identity into their constitutions or laws, directly or indirectly, while others have policies and programmes to reflect sexual and gender diversity. Yet, within the lesbian, gay, bisexual and transgender setting, some groups are particularly marginalized and may need special measures to help overcome difficulties. For instance, transgender persons are often discriminated against at school and this pushes them out of the educational set-up; they might then fall into a situation of marginalization and then exploitation.

56. The discrimination is also intersectional. There might be tints of patriarchy impacting on women, which also impact negatively on lesbians and women who have sex with women. There might be traces of racism, which also impact negatively on refugees and migrants who are lesbian, gay, bisexual or transgender. There might be hints of extremism that impact negatively on those who wish to have their sexual orientation and gender identity respected culturally. Even where there are laws to protect people from discrimination, there might be weak implementation. This is further tested by issues such as access to justice and mechanisms and/or personnel that could provide some assistance and remedies, and the call for transparency and accountability. There is thus a need for effective anti-discrimination measures of a comprehensive kind — not only formal but also substantive, not only de jure but also de facto — in addition to the building of a community that is open to understanding and that respects sexual and gender diversity.

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[30] UNHCR, "Protecting persons with diverse sexual orientations and gender identities: a global report on UNHCR's efforts to protect lesbian, gay, bisexual, transgender and intersex asylum seekers and refugees", p. 13.

C. Legal recognition of gender identity

57. In many countries, transgender persons are not able to have their self-identified gender recognized by the State, even with gender reassignment surgery, and have to endure lifelong abuses and discrimination. Non-recognition is interlinked with the environment that leads to violence and discrimination. In some situations, they are forced to undergo gender reassignment surgery, other medical procedures, such as psychological assessment, conversion therapy, sterilization and also divorce, with or without legal recognition of their self-identified gender. Other impediments include bureaucratic hurdles and difficulties in accessing medical care, such as hormone treatment, as well as in accessing the wherewithal of life, such as education, housing, a decent standard of living and employment opportunities. Yet, a number of countries, such as Argentina, Australia, Malta, and Scandinavian countries, are now leading the way by enabling people to have their self-identified gender recognized under national law without the need for surgery and related medical procedures, unless they opt for the latter on a non-coerced basis, and by reducing the bureaucratic hurdles along the way. On a related front, the issue of forced surgery (from a young age) also pertains to intersex persons; this is interrelated with violence and discrimination, whereby such persons are prevented from enjoying the element of choice concerning their sexual orientation and gender identity, which is an intrinsic part of the diversity of human life. There is thus a need to move towards legal recognition of self-defined gender identity without coerced methods.

D. Destigmatization linked with depathologization

58. Stigma based on sexual orientation and gender identity, and, concomitantly, violence and discrimination, may arise in a variety of situations, including in the medical and related sectors, and this is linked with the issue of pathologization. Before 1990, even at the international level, homosexuals were classified as mentally ill; this exemplified a pathologizing approach towards sexual and gender identity (looking at lesbian, gay, bisexual and transgender persons as suffering from some form of illness, mental disorder, dysphoria or incongruence), which is now increasingly being questioned. Even though the pathologization facing homosexuals/gays is now no longer the case internationally, at the national and local levels, the situation is still opaque. There are also some parts of the world where gays and lesbians are still being forced into conversion therapy in the distorted belief that this will change their sexual orientation and gender identity. In regard to transgender and intersex persons, the situation is difficult internationally, as they still fall under the International Classification of Diseases, which is now in the process of being adjusted to reduce stigma.[31] There is a further consideration as regards how to ensure sustained access to medical care and services, such as access to hormones and related treatment. The preferred approach should be to ensure access to comprehensive health care for all, without resorting to labels that give rise to stigma. The invitation to destigmatize and depathologize opens the door to more cooperation with the medical, scientific and ethics sectors, to promote shared understanding that sexual orientation and gender identity are part of the natural state of being human, and correlatively, to ensure respect for all persons without distinction.

E. Sociocultural inclusion

59. Regrettably, lesbian, gay, bisexual and transgender persons are excluded from society in many countries: the marginalization and peripheralization are part of a vicious cycle that gives rise to a host of other problems. The atmosphere that excludes people from the sociocultural environment inevitably lends itself to violence and discrimination. The case of transgender persons illustrates this: in many countries, they are often bullied at

[31] Dario Chiozzi and others, "Sexual health in the International Classification of Diseases (ICD): implications for measurement and beyond", *Reproductive Health Matters*, vol. 23, No. 46 (2015), pp. 185-192.

school, are then pushed out onto the streets and then land up in clandestine professions. They face huge hurdles in accessing other kinds of work and are challenged daily by issues such as access to health care, access to housing, getting an adequate standard of living, and personal safety.

60. Conversely, an inclusive society enables people to enjoy protection from violence and discrimination, and leaders in the social, cultural, political and other fields can have an important role in communicating, motivating and fostering that inclusiveness. Religions and other belief systems, in their sense of humanity, can be a great platform for promoting understanding and empathy — in terms of nurturing care, compassion, tolerance and respect for diversity. Yet, the situation locally often leaves much to be desired where there are approaches to and/or interpretations of doctrines or beliefs which are inconsistent with human rights; this results in sociocultural exclusion which is then channelled into situations of violence and discrimination. It should not be forgotten that exclusion, steeped in violence and discrimination, also has a social and economic cost, both for the victim and for society as a whole. This is obviously the case where such exclusion pushes people underground, for example in relation to HIV/AIDS — making disease control difficult and with ensuing health implications and economic/financial consequences for society.

F. Promotion of education and empathy

61. Lack of education and/or awareness and lack of understanding may transmute into biases, prejudices and phobias from a young age, which underlie the violence and discrimination. This is interlinked with the quality of the educational spectrum and how to nurture a sense of empathy for sexual orientation and gender identity as an inherent part of all of us. State policies vary in their openings towards the issue of sexual orientation and gender identity. While some States have tried to integrate the issue into the curriculum at different stages, others have shunned the possibility altogether. Issues related to sexual orientation and gender identity can be dealt with indirectly or directly (e.g. through health education, indirectly, and/or through specific courses focusing on sexual orientation and gender identity, directly). One entry point that is now being explored in several countries is to address the bullying, which marginalizes persons at school from childhood onwards. With the help of United Nations agencies, some countries are now breaking the ice by integrating sexual orientation and gender identity into the educational curriculum through that issue. This is a key area where international cooperation and technical support and assistance can help open doors towards a more empathetic world, both at the national level and internationally. This requires dialogue and interaction between school principals, teachers, parents and students. It invites reappraisal of both educational content and textbooks, and the building of pedagogical tools and methodology, to promote an open mindset and respect for human biodiversity.

VII. Conclusions

62. **The present report is the first report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, and its theme is "diversity in humanity, humanity in diversity". The phenomenon of violence and discrimination based on sexual orientation and gender identity is both local and global, requiring strong national and international countermeasures to promote respect for sexual and gender diversity under the umbrella of international human rights law. In recognizing that everyone has some form of sexual orientation and gender identity, there is the regrettable reality that some groups and persons are affected by violence and discrimination, precisely because they are viewed as having a sexual orientation and gender identity that is different from a particular societal norm. This is enmeshed in the political, social, cultural and economic setting of each country, which invites a context-specific analysis and understanding of each scenario. While human rights are inherent to all persons without distinction, the situations facing those groups and persons may vary; it is not necessarily homogeneous.**

63. The present report endeavours to set the scene for more monitoring and advocacy to protect people from violence and discrimination on the basis of sexual orientation and gender identity. It is also important to comprehend the multi-layered nature of the violence and discrimination — it starts at home, extends into the educational spectrum, influences the community environment, and continues into the State setting and beyond. It has a longitudinal trajectory, with intergenerational implications. It is also concurrently personal/personalized, family-based, community-influenced and systemic, and at times is linked with institutional violence and discrimination. To overcome these impediments, it is necessary to "start young" with promoting mutual respect and tolerance.

64. The report allows the approach and methodology of the Independent Expert to be gauged. There are key reflections responding to the mandate, particularly regarding (a) the panorama of the situation, including the implementation of international instruments, with identification of good practices and gaps; (b) awareness of the violence and discrimination issue, and linkage with root causes; (c) dialogue, consultation and cooperation with States and other stakeholders; (d) the identification of multiple, intersecting and aggravated forms of violence and discrimination; and (e) support for international cooperation and related services to assist national efforts.

65. Various underpinnings are singled out for particular attention to help prevent and overcome the negative elements of that environment and these will be dealt with in greater detail in future reports of the Independent Expert.

VIII. Recommendations

66. The following initial recommendations invite constructive responses from a variety of actors, particularly States, in cooperation with other stakeholders:

(a) The Independent Expert will follow progressively a workplan to map the linkage between protection against violence and discrimination based on sexual orientation and gender identity and the following key underpinnings: decriminalization of consensual same-sex relations; effective anti-discrimination measures; legal recognition of gender identity; desegmentation linked with depathologization; sociocultural inclusion; and promotion of education and empathy. He welcomes cooperation and information on these issues.

(b) For the second report, due later in 2017 for the General Assembly, the Independent Expert aims to address the key underpinnings outlined above in further detail. In this regard, Governments and other entities concerned are invited to send the Independent Expert relevant information by the beginning of July 2017 so as to enable him to prepare the next report on the basis of information from a range of sources.

(c) States are encouraged to ratify the core international human rights treaties (if they have not yet done so) and to implement them fully, including in regard to respect for sexual orientation and gender identity, in cooperation with partners. This requires a range of human rights-sensitive measures, such as laws, policies, programmes, practices, case enforcement, mechanisms and personnel, resources (material and non-material), information and monitoring, education and capacity-building, accountability and remedies, and a participatory process and broad mobilization and networking open to civil society, with space for dialogue and reforms.

(d) States are urged to follow up effectively on the various recommendations from the human rights treaty bodies, the universal periodic review and the special procedures in order to ensure improved protection from violence and discrimination on the basis of sexual orientation and gender identity. Linkage with and support for OHCHR is also important in this regard.

(e) **The Sustainable Development Goals offer an opportunity to tackle violence and discrimination, also in regard to sexual orientation and gender identity, and this opportunity should be taken full advantage of in order to ensure that no one is left behind, without exception or distinction. This avenue can allow Governments and other actors to generate data and information in a disaggregated manner so as to facilitate future planning and allocation of resources.**

(f) **There is a need to build checks and balances, especially at the national level, to prevent abuses of power and to ensure compliance with human rights. Cooperation should be explored not only with the executive branch of government, but also with parliamentarians and the judiciary, who may assist in weighing the various actions at the national level to ensure respect for international human rights standards. In parallel to this, capacity-building for law enforcers and related personnel, including through education and the integration of sexual orientation and gender identity into their educational curricula, is much needed in order to enhance understanding about sexual orientation and gender identity and about sexual and gender diversity.**

(g) **More cooperation with independent and pluralistic national human rights institutions, such as national human rights commissions and ombudspersons, should be undertaken to provide a link between international norms and national settings. These institutions should be supported, as part of the checks and balances to prevent and overcome abuses of power and human rights violations and also to promote access to justice and remedies. They should be paralleled by strong regional systems and initiatives to help advance protection against violence and discrimination on the basis of sexual orientation and gender identity.**

(h) **The work of human rights defenders and the much-needed space for civil society, including for non-governmental organizations and for lesbian, gay, bisexual, transgender and intersex groups and persons, calls for effective safeguards against incursions and reprisals from various protagonists (whether State or non-State actors) who do not comply with human rights. Cooperation with a multiplicity of actors, including community leaders (such as political and religious leaders) and those in the medical and scientific professions, the business sector and the media (e.g. social networks) should be fostered in order to protect against violence and discrimination on the basis of sexual orientation and gender identity, with that protection underscored by international human rights law. This is interlinked with the call for broad-based education, awareness-raising and action responsive to issues of sexual orientation and gender identity.**

(i) **The role of the United Nations, including the Human Rights Council and the General Assembly, is pivotal in order to raise the issue of violence and discrimination and to address it through comprehensive and holistic measures, with due regard for the recommendations of the Independent Expert as an impetus for follow-up action. United Nations human rights presences are important and need to be bolstered in countries and regions where there are major gaps in human rights protection; this is certainly also the case in regard to sexual orientation and gender identity. This should be complemented by the catalytic role of United Nations country teams and inter-agency cooperation to integrate sexual orientation and gender identity issues into programming and practices on the basis of no "protection deficit" and no "protection vacuum".**

(j) **The Independent Expert is firmly committed to building bridges, that are anchored on the mandate, with a broad range of actors and stakeholders (governmental, intergovernmental and non-governmental), and looks forward to constructive dialogue and cooperation, with more country visits — premised on international human rights law, reflective of local wisdom and resonant with the universal message of "diversity in humanity, humanity in diversity".**